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C O N F I D E N T I A L STATE 262374

E.O. 11652: GDS
TAGS: TSPA, PFOR, UN
SUBJECT: SOVIET MOON TREATY PROPOSALS: NATURAL RESOURCES

1. WE HAVE NOW REVIEWED THE DRAFT CHANGES IN THE NATURAL RESOURCES ARTICLE OF THE MOON TREATY WHICH WERE GIVEN TO USDEL (REIS) BY THE SOVIETS (ORDZHONIKIDZE) IN NEW YORK. ALTHOUGH WE ARE PLEASED TO SEE THE COMMON HERITAGE OF MANKIND FORMULA USED IN ART X-BIS (4), WE DO HAVE SEVERAL SIGNIFICANT MODIFICATIONS TO OTHER PROVISIONS. PARAGRAPH BY PARAGRAPH ANALYSIS FOLLOWS:

2.(A) ART X, 1: ACCEPTABLE AS IS.

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(B) ART X, 2: WE WISH TO DROP THE FIRST SENTENCE IN ORDER TO AVOID ASSERTIONS, FOR EXAMPLE, THAT A STATE WHICH BRINGS BACK ROCKS OR SAMPLES FROM THE MOON DOES NOT HAVE

THE RIGHT TO CONTROL THE DISTRIBUTION AND HANDLING AND USE OF SUCH MATERIAL. REFERENCE TO THE SURFACE OR SUBSURFACE OR PARTS THEREOF COULD REASONABLY BE INTERPRETED AS INCLUDING SUCH MATERIALS IN ADDITION TO THE CONCEPT OF AREAS ON CELESTIAL BODIES, THE LATTER OF WHICH WE AGREE SHOULD NOT BECOME THE PROPERTY OF STATES, ETC. IN ADDITION, THE PHRASE "BECOME PROPERTY OF ANY STATE" ETC. IS SO BROAD THAT IT COULD REASONABLY BE INTERPRETED TO PRECLUDE SUCH RIGHTS AS THOSE MENTIONED ABOVE. WE BELIEVE THAT RETENTION OF THE SECOND SENTENCE, COMBINED WITH

ART X (1) AND X-BIS (5), SHOULD BE ADEQUATE TO AFFIRM THAT STATES MAY NOT CLAIM SOVEREIGNTY OR EXCLUSIVE CONTROL OVER AREAS OF CELESTIAL BODIES WITHOUT CREATING PROBLEMS ABOUT CONTROL OVER SAMPLES BROUGHT BACK. WE PREFER "PERMANENTLY AFFIXED" TO "INDISSOLUBLY CONNECTED".

(C) SENTENCE 3 OF ART X (2) SHOULD BE MADE A SEPARATE PAR. AND SHOULD COME LAST IN ART X SO THAT IT APPLIES TO ALL THE PROVISIONS THEREOF.

(D) FOR MANY OF THE SAME REASONS EXPRESSED IN SUBPARA (B) ABOVE, WE STILL WISH ART X (3) TO BE DELETED. THIS PROVISION IS OBVIOUSLY SUBJECT TO INTERPRETATION THAT, FOR EXAMPLE, MOON ROCKS BROUGHT BACK BY APOLLO ARE NOT SUBJECT TO "GRANT, EXCHANGE, TRANSFER, SALE OR PURCHASE, LEASE, HIRE, GIFT OR ANY OTHER ARRANGEMENTS," ETC. WE ARE NOT WILLING TO AGREE TO SUCH RESTRICTIONS, WHICH COULD CLEARLY CONTRADICT EVEN PRESENT PRACTICE.

(E) ART X-BIS (1): ACCEPTABLE AS IS.

(F) ART X-BIS (2): ACCEPTABLE WITH ADDITION OF WORD "AN" BEFORE "INTERNATIONAL REGIME," PRESUMABLY A TYPO.

(G) ART X-BIS (3): THE REFERENCE TO "DETERMINING" AN EQUITABLE SHARING OF BENEFITS IS TROUBLESOME BECAUSE IT COULD BE USED AS THE BASIS FOR EFFORTS TO "DETERMINE" OR ESTABLISH SOME FIXED FORMULA FOR DISTRIBUTION OF ANY BENEFITS DERIVED FROM USE OF THE NATURAL RESOURCES. WE SUGGEST SUBSTITUTING AFTER THE PHRASE "NATURAL RESOURCES OF THE MOON" THE FOLLOWING LANGUAGE: "AND TO EXPAND

OPPORTUNITIES FOR THE EQUITABLE SHARING OF BENEFITS RESULTING FROM THE USE THEREOF. THE INTERESTS AND NEEDS OF THE DEVELOPING COUNTRIES SHALL BE GIVEN PARTICULAR CONSIDERATION IN THIS REGARD."

(H) ART X-BIS (4): ACCEPTABLE WITH DELETION OF PHRASE "BY THE DEPOSITORY GOVERNMENTS," ON PRESUMPTION THAT THE UN WOULD BE THE DEPOSITORY.

(I) ART X-BIS (5): ACCEPTABLE WITH DELETION OF THE WORD "THE" IN THE PHRASE "ALL THE ACTIVITIES." INCLUSION OF THAT ARTICLE CONNOTES THE EXISTENCE OF SUCH ACTIVITIES.

(J) ART X-BIS (6): ACCEPTABLE AS IS.

3. IT IS OUR UNDERSTANDING THAT ALL REFERENCES TO THE MOON WILL BE EXPANDED TO REFER TO "OTHER CELESTIAL BODIES" AS WELL.

4. USDEL SHOULD CONVEY THESE IDEAS AND PROPOSED CHANGES TO SOVDEL. INGERSOLL